Learned counsel for the plaintiff replied that the plaintiff had contended that the second defendant had represented to him that the contract between the plaintiff and TESB would be continued and this was in fact an issue to be tried. In consequence, the plaintiff had expended more money on the project. Further, the second defendant never terminated the said contract and had stepped into the shoes of TESB. In effect, therefore, they had adopted the contract which was not a contract of service. In the circumstances, compensation would not be adequate for the plaintiff as vast sums of money had been expended.

He added that the plaintiff would continue to incur more losses if the highest offer is not accepted as a result of the second defendant's advertisement. The second defendant also did not appoint the new manager on their appointment as manager and receiver but some three weeks later after the plaintiff had spent more money on the orchard in view of the second defendant's representation to him. Counsel also informed the court that the appeal on the connected charge action was still pending in the Supreme Court.

Having marshalled all the facts and considered the arguments and affidavits, it is not disputed that the plaintiff had been engaged by TESB in May 1987 to manage the orchard from May that year and the court also accepts the fact that the plaintiff must have incurred some expenditure in the management of the said orchard. It is also clear that TESB is the chargor of the said land charged to the first defendant and that the second defendant was appointed receiver and manager by the first defendant only on 10 May 1988.

As had been stated earlier, learned counsel for the defendants had undertaken to pay damages suffered by the plaintiff by reason of the dissolution of the injunction given on 15 June 1988 if the court is of the view that the situation is such at the hearing of the main suit. Learned counsel had also insisted that an injunction was not in order as the plaintiff could be adequately compensated. However, learned counsel for the plaintiff had submitted otherwise as to the adequacy of the compensation and had stressed that the second defendant did not actually terminate the contract between TESB and the plaintiff on their appointment as receiver and manager. They had therefore merely literally stepped into the shoes of TESB.

In the circumstances, the court was guided by what is stated in *Palmers' Company Law* at pp 624-625 at para 46-08 and I quote the relevant excerpts:

> The appointment by the debenture holders of a receiver and manager as agent of the company, not being an appointment under an order of the court, does not of itself automatically terminate contracts of employment previously made and subsisting between the company and all its employees. In three exceptional circumstances, however, such an appointment will result in termination of employment contracts, viz:
>
> (1) where the appointment of a receiver is accompanied by a sale of the business of the company;
> (2) where the receiver enters into a new agreement with a particular employee that may be inconsistent with the old contract;
> (3) where the continuation of the employment of a particular employee is inconsistent with the role and function of a receiver and manager.

I was of the view that the plaintiff was employed by TESB as affirmed by him at para 3 of his affidavit at encl 1 dated 15 June 1988 and upon perusal of 'YLB-1' attached to the said affidavit. Since this contract had not been terminated by the second defendant on their appointment as receiver and manager and that none of the three situations stated in *Palmer's* apply as quoted above, I came to the conclusion that upon a balance of convenience, it was better for the status quo to be maintained as at the grant of the injunction granted on 15 June 1988.

In the circumstances, I dismissed the defendants' summons-in-chambers with costs.

Application dismissed.

Solicitors: *Yeoh Kian Teik & Co*; *Concisom & Co.*

Reported by *PS Ranjan*

Cocoa Processors Sdn Bhd v United Malayan Banking Corporation Bhd & Ors

HIGH COURT (PENANG) – SUIT NO 23-102-87
MOHAMED DZAIDDIN J
15 APRIL 1988

Civil Procedure – Ex parte interim injunction to restrain defendants from disposing of and dealing with assets of plaintiff – Application to set aside injunction – Whether serious question to be tried – Non-disclosure of material facts – Injunction dissolved

In these applications, the defendants seek an order that the interim injunction granted to the plaintiff on 3 April 1987 be dissolved. By the said order the defendants were restrained from disposing of, selling or dealing with the assets of the plaintiff pending the final determination of the plaintiff's action and/or until further order. The third, fourth, fifth and sixth defendants, being receivers and managers appointed under the debentures, were restrained from, inter alia, issuing any prospectus or releasing information pertaining to the trade and production methods of the plaintiff to a third party.

The plaintiff is a limited company incorporated in Malaysia carrying on the business of cocoa processing. The first and second defendants are bankers and are the main financiers of the plaintiff's business, and pursuant to the various credit

facilities granted by them to the plaintiff, all-moneys debentures were created by the plaintiff in favour of the first and second defendants whereby the plaintiff covenanted to pay the defendants on demand all moneys due or owing under any account or under any banking facilities whatsoever. The first debenture dated 24 June 1981 was created to secure a loan of $3 million. Subsequently, it was upstamped four times to secure facilities up to $6.6 million.

On 6 September 1984, a second debenture was created by the plaintiff in favour of the first defendant, where the plaintiff undertook to pay on demand the said sum of $3 million together with interest thereon.

These debentures created by the plaintiff had been duly registered with the Registrar of Companies under s 108 of the Companies Act 1965. The plaintiff raised four grounds of contention, inter alia, that the first and second defendants had acted mala fide when they placed the plaintiff under receivership thereby causing irreparable loss and great harm to the reputation and goodwill of the plaintiff, and that the third, fourth, fifth and sixth defendants were acting in a manner contrary to the terms of the debentures and of other duties under the law.

Held, allowing the defendants' applications and setting aside the injunction:

(1) Having considered the entire evidence and the submissions of counsel, the court is satisfied that the banking facilities and securities are governed by the two debentures created by the plaintiff in favour of the first and second defendants.

(2) Under the debentures, it is clearly provided that the moneys secured shall become immediately payable to the first and second defendants upon the happening of any one of seven specified events, including default of the plaintiff in payment of any moneys thereunder. It is also provided that after the moneys become payable under cl 14, the first and second defendants have three remedies, including the right to appoint receivers and managers over the properties and assets charged under the debentures.

(3) The third, fourth, fifth and sixth defendants were validly appointed pursuant to cll 14(b) and 15(c) of the debentures. The plaintiff was given ample time and opportunities to repay the loans and was not able to honour its promises made.

(4) There is no serious question to be tried on the pleadings. On this ground alone, the present injunction should be dissolved.

(5) The plaintiff has failed to disclose material facts which are relevant to the granting of the interim injunction. In the circumstances the interim injunction should be dissolved on this ground.

(6) There was delay on the part of the plaintiff to apply for the interim injunction. The plaintiff had taken 11 months from the time the third, fourth, fifth and sixth defendants were appointed as receivers and managers before applying to this court for the interim injunction.

(7) There is no sufficient evidence of mala fides and any allegation of that sort is unfounded.

(8) As the receivers and managers were validly appointed under the terms of the debentures, the plaintiff company acting through the directors is not entitled to bring this present action.

[*Editorial Note*: The plaintiff has lodged an appeal vide Supreme Court Civil Appeal No 163 of 1988.]

Cases referred to

1 *American Cyanamid* v *Ethicon Ltd* [1975] AC 396 (folld)
2 *Shamji* v *Johnson Mathey Bankers* [1986] BCLC 278 (refd)
3 *Bank of Baroda* v *Panessar* [1987] 2 WLR 208 (refd)
4 *Re Neon Signs (Australia) Ltd* [1965] VR 125 (refd)
5 *Daglish* v *Jarrie* (1851) 120 LJ Ch 475 (refd)
6 *Thermax Ltd* v *Schott Industries Glass Ltd* [1981] FSR 289 (refd)
7 *Newhart Developments* v *Cooperative Commercial Bank Ltd* [1978] 2 WLR 636 (CA) (refd)

Charles Ong for the plaintiff.
T Thomas for the first defendant.
Juliana Solomon (Miss) for the second defendant.
Ghazi bin Ishak for the third, fourth, fifth and sixth defendants.

Cur Adv Vult

Mohamed Dzaiddin J: In these applications, the defendants have asked this court for an order that the interim injunction granted to the plaintiff by this court on 3 April 1987 be dissolved. By the said order of 3 April 1987, the defendants were restrained from disposing, selling, dealing with the assets of the plaintiff pending the final determination of the plaintiff's action and/or until further order. Further the third, fourth, fifth and sixth defendants, being receivers and managers appointed under the debentures, were restrained from issuing any prospectus or releasing information pertaining to the trade and production methods of the plaintiff or allowing any inspection of the plaintiff's production methods to a third party. In short, the first and second defendants are restrained from exercising their rights under the terms of the various debentures which I shall refer to shortly.

The ex parte application (encl 5) of the plaintiff was supported by the affidavit of Mr Alan Rajendram, the executive director of the plaintiff company, dated 31 March 1987 where in addition to the facts stated therein he relied on the averments in the plaintiff's statement of claim as grounds for seeking the interim injunction.

The plaintiff is a limited company incorporated in Malaysia and runs a factory at Parit Buntar industrial estate carrying on the business of cocoa processing. Both the first and second defendants, who are bankers, are the main financiers of the plaintiff's business and pursuant to the various credit facilities granted by them to the plaintiff, all-moneys debentures were created by the plaintiff in favour of the first and second defendants whereby the plaintiff covenanted to pay the defendants on demand, all moneys due or owing under any account or under any banking facilities whatsoever. The first debenture dated 24 June 1981 was created to secure a loan of $3 million. Subsequently, on 7 and 12 January 1982, it was upstamped to secure facilities up to $5 million, and was further upstamped on 10 December 1982 up to $6.1 million. Finally, on 11 September 1984, it was upstamped to secure facilities up to $6.6 million.

On 6 September 1984, a second debenture was created by the plaintiff in favour of the first defendant, upon the first defendant lending the first plaintiff $3 million. The plaintiff undertook to pay on demand the said sum of $3 million together with interest at the rate of 3.5% pa above the first defendant's base lending rate for the time being or at such other rates fixed by the first defendant in its discretion. All the terms contained in the first debenture apply to the second debenture.

The relevant terms of the first debenture dated 24 June 1981 granted to the first defendant are as follows:

(a) the bank is entitled to charge interest at 13% pa or such other rate fixed by it in its sole discretion. The statement of certain designated bank officers would be final and conclusive on any outstanding balances (cl 1);
(b) the securities created by the first debenture would be continuing ones for all moneys owing to the bank (cl 4);
(c) the securities created by the debenture include a first fixed charge over a piece of immovable property duly identified in the schedule thereto and a first floating charge over all the undertakings, properties and assets of the company (cl 6);
(d) the bank may, at any time, in its absolute discretion convert the floating charge to a fixed charge (cl 7);
(e) the company covenanted to carry on and operate its business and affairs 'with due diligence and efficiency' (cl 11);
(f) the moneys secured under the debenture shall become immediately payable to the bank upon the happening of any one of seven specified events, including default of the company in payment of any moneys payable thereunder (cl 14(b));
(g) if the moneys became payable under cl 14, the bank has three remedies, including the right to appoint receivers and managers over the properties and assets charged under the debenture (cl 15(c));
(h) the powers of the receivers and managers so appointed include the power to take possession of all properties and assets charged under the debenture; to carry on and manage the business of the company and to sell or otherwise deal with the charged properties and assets (cl 16);
(i) the receivers and managers so appointed shall be the company's agents and the company shall be solely responsible for their acts or defaults and for their remuneration (cl 18);
(j) the company shall 'do all things necessary to enable' the bank and/or the receivers and managers to complete any sale of any charged properties and assets (cl 19);
(k) no failure or dellay on the part of the bank in exercising or omitting to exercise any right or remedy under the debenture shall be construed as a waiver thereof or acquiescence for such inaction (cl 25);
(l) the company shall pay the fees of the solicitors retained by the bank on a solicitor and own client basis in the event that litigation ensues as a result of breaches of the debenture by the company (cl 32).

These debentures created by the plaintiff had been duly registered with the Registrar of Companies under s 108 of the Companies Act 1965.

It is the plaintiff's case that the said debentures were created strictly on the express conditions as contained in the respective letters of offer from the first and second defendants and that the facilities were used in respect of the working capital for the plaintiff's factory. The plaintiff alleged that on or around 24 April 1986, both the first and second defendants jointly purportedly appointed the third, fourth, fifth and sixth defendants as receivers and managers under the respective debentures and such appointment was made on the grounds that the plaintiff had defaulted in the repayments of the various sums due under the credit facilities granted by both defendants.

Upon the grounds stated hereunder, the plaintiff contended that the said appointment of receivers and managers is wrong, invalid and contrary to law:

(1) At the material time of the appointment of receivers and managers, the plaintiff was not in default of any repayment of loans due to the first and second defendants. However, they admitted that they were only in arrears of their loan repayments to the first defendant for a period of nearly one year. The plaintiff alleged that the first defendant had waived or elected to waive the immediate payment of such arrears since they were aware that the plaintiff was undergoing a massive restructuring exercise which involved the backward and forward integration programme. Further, the plaintiff alleged that both the first and second defendants were aware of this exercise and also knew the reasons for the poor performance of the plaintiff's factory and the reasons for the problems arising from the repayment of the facilities.

(2) In the case of the second defendant, the plaintiff alleged that notwithstanding the arrears of the obligations in respect of the first defendant's loan, the second defendant with full knowledge carried on and continued to grant revolving credit facilities on a rollover basis from time to time and thereafter these facilities were further extended whereby it was agreed that the facilities should be continued until 30 September 1986. Notwithstanding that the plaintiff was not in default in respect of the credit facilities given by the second defendant on the ground mentioned above, the plaintiff alleged that the second defendant on or about 15 April 1986, through their solicitors, terminated the said credit facilities and demanded immediate payment of the full amount owing. Consequently, on or about 24 April 1986, the second defendant appointed the third, fourth, fifth and sixth defendants as receivers and managers.

(3) The plaintiff also alleged that both defendants had acted mala fide when they placed the plaintiff under receivership thereby causing irreparable losses and that such appointment had caused great harm in that the reputation and goodwill of the plaintiff had been adversely affected, and had further frustrated the plaintiff's restructuring and integration programme.

(4) As against the third, fourth, fifth and sixth defendants, the plaintiff alleged that they are acting in a manner contrary to the interest of both the lenders and borrowers and in particular contrary to the terms of the debentures and of other duties and obligations under the law.

On 31 March 1987, the plaintiff commenced action against all the defendants seeking a declaration that the appointment of the third, fourth, fifth and sixth defendants as receivers and managers was wrong, illegal and invalid. On the same day, the plaintiff filed his ex parte summons for an interim injunction against the defendants, which I heard on 3 April 1987 and made an order in terms.

I shall first deal with the application of the first defendant (encl 31), which is supported by the affidavit of Mr Leong Pak Cheong affirmed on 29 November 1987. This application merely concerns the first part of the injunction order. Part II of Mr Leong's affidavit contains replies to specific matters raised in Mr Rajendram's affidavit. In part III, he sets out the grounds upon which this injunction should be dissolved. Before I go on to examine the grounds, let me first state the obvious, ie that the validity of all the debentures in the applications before me are not disputed. The crucial issue in the writ and in the present proceeding relates to the appointment of the third, fourth, fifth and sixth defendants as receivers and managers under the terms of the debentures.

The grounds raised by the first defendant in Mr Leong's affidavit can be summarized as follows. First, he says that the plaintiff is not entitled in law to this ex parte injunction because the first defendant was merely exercising its contractual right under cl 15 of the first debenture, whereby upon default by the plaintiff in repaying the outstandings, the first defendant proceeded to appoint the third, fourth, fifth and sixth defendants as receivers and managers of the properties and assets charged under the two debentures. Further, and for the above reasons, the first defendant says that the plaintiff is estopped from challenging in these proceedings the first defendant's contractual right to appoint the receivers and managers.

Secondly, he contends that the plaintiff had taken more than 11 months after the appointment of the receivers and managers before applying for this interim injunction and in the circumstances, the plaintiff is precluded by reason of delay, laches and acquiescence in applying for the injunction. In addition, the first defendant complained that the plaintiff did not serve the injunction cause papers timeously and promptly on him or the solicitors. This meant that delay was caused to the first defendant in applying to set aside this injunction.

Thirdly, the plaintiff had failed to disclose material documents to this court when the ex parte application was filed. These documents are exhibited to Mr Leong's affidavit. Having looked at their contents, I find them useful when I consider this ground of non-disclosure.

Mr Thomas, for the first defendant, submitted six grounds why the present injunction against his client should be dissolved. Besides the three grounds mentioned above, learned counsel submitted that there is no serious question to be tried on the plaintiff's writ of summons under the *American Cyanamid*[1] test. Secondly, the plaintiff's action impinges and prejudices the first defendant as debenture holder qua debenture holder by threatening or imperiling the assets which are the subject matter of the fixed and floating charge (see: *Kerr on Receivers*, 14th Ed (1972), p 301 – under the heading 'Effect of Appointment'). Learned counsel also contended that the plaintiff acting through the directors cannot properly bring the present action. He cited three cases, which showed that on a valid appointment of the receivers and managers, the court had refused to grant the injunction made by the company (see *Shamji* v *Johnson Mathey Bankers*;[2] *Bank of Baroda* v *Panessar*[3] and *Re Neon Signs (Australia) Ltd*[4]).

Mr Charles Ong, counsel for the plaintiff, in his reply contended that the third, fourth, fifth and sixth defendants were wrongly appointed. He relied entirely on the facts as deposed in Mr Rajendram's affidavit (encl 6). Learned counsel conceded that moneys were owing to the first defendant, but questioned whether these moneys were due at the material time of the appointment of the receivers and managers. He mentioned the moratorium given by the first defendant to the plaintiff and submitted that even on this issue there is a serious question to be tried. In the result, counsel submitted that the injunction should remain, at least pending the disposal of the plaintiff's application to lift or suspend the receivership and their consequential orders prayed for in summons-in-chambers (encl 7).

Having considered the entire supporting affidavits and the various exhibits as well as the submissions of counsel, I come to the following conclusions:

(1) From the debentures and other documents including various correspondences, I am satisfied that the banking facilities and securities are governed by the two debentures created by the plaintiff in favour of the first defendant. I do not agree that the facilities given were based on the express conditions stated in the letters of offer given by the first defendant.

(2) Under the first debenture, it is clearly provided that the moneys secured shall become immediately payable to the first defendant upon the happening of any one of seven specified events, which includes default of the plaintiff in payment of any moneys thereunder. It is also provided that after the moneys become payable under cl 14, the first defendant has three remedies, including the right to appoint receiv-

ers and managers over the properties and assets charged under the debentures.

(3) Based on the facts narrated in part I of Mr Leong's affidavit, the contents of which had not been challenged by the plaintiff and pursuant to cll 14(b) and 15(c) of the first debenture, it is my finding that the third, fourth, fifth and sixth defendants were validly appointed. Perhaps, I should stress here that upon considering the entire correspondences and in particular the letters exhibited to Mr Leong's affidavit and marked as LPC1, LPC2, LPC3, LPC4 and LPC5, I am satisfied that the plaintiff was given ample time and opportunities to repay the various loans and facilities owing to the first defendant. The plaintiff did ask for time and more time was what they got. Yet, despite the time given in terms of an agreed moratorium and despite several promises made, the plaintiff, at the end of the day was not able to honour the promises made.

(4) Therefore, for the above reasons, I entirely agree with Mr Thomas' submission that there is no serious question to be tried on the pleadings under the well-known *American Cyanamid*[1] test. Hence on this ground alone the present injunction should be dissolved. However, I shall also consider other grounds.

(5) Based on the affidavit of Mr Leong, I find that the plaintiff has failed to disclose material facts which are relevant to the granting of the interim injunction. I refer to the documents marked as LPC1, LPC2, LPC3, LPC4 and LPC5 in encl 30. To me these correspondences are material to the plaintiff's application because they show the sincerity of the first defendant in trying to solve the problem faced by the plaintiff. Further and more importantly, these documents seem to show the lack of concrete proposals of the plaintiff in trying to settle the outstandings resulting in the appointment of the receivers and managers. It is established law that a party applying for an ex parte injunction is bound to state not only the facts he considers material but also all facts within his knowledge which are material (*Daglish* v *Jarrie*[5]) otherwise the order may be set aside without regard to the merits (*Thermax Ltd* v *Schott Industries Glass Ltd*[6]). In the circumstances, the interim injunction should be dissolved on this ground.

(6) The next material ground is the delay on the part of the plaintiff to apply for the interim injunction. It is not disputed that the plaintiff had taken 11 months from the time the third, fourth, fifth and sixth defendants were appointed as receivers and managers before applying to this court for the interim injunction. Of course, I take note of the principal reason given by the plaintiff to explain their delay, which I interpret to mean that they were expediting the restructuring programme and even obtained the services of a merchant bank to try to find a solution to their problem. One wonders if it really took the plaintiff nearly a year to resolve their problem before they filed a writ and applied for the interim injunction. With respect, I am not impressed with this explanation and in my opinion the delay of 11 months is too long and amounts to an acquiescence by the plaintiff in the first defendant's conduct by appointing the receivers and managers and in the circumstances the said delay does not entitle the plaintiff to the assistance of this court.

(7) I am also satisfied that there is no sufficient evidence of acts of mala fides and any allegation of that sort is unfounded.

(8) Finally, taking up further the grounds raised by Mr Thomas, it is pertinent that I pose the following question: Having held that the receivers and managers were validly appointed under the terms of the debentures, can the plaintiff company acting through the directors bring this present action? Following the three authorities cited by counsel, in my opinion, they cannot. In *Shamji*,[2] the mortgagee was given the power to appoint a receiver to protect his interest and it was held that the decision of the mortgagee to exercise this power could not be challenged except perhaps on the ground of bad faith. In that case the plaintiff alleged that the mortgagee acted wrongfully and in breach of contract by appointing receivers of the assets and undertakings of various companies of his group. They claimed an injunction to restrain the receiver from acting, and damages. In *Bank of Baroda*,[3] the defendant did not dispute the validity of the appointment of the receiver and cooperated with him in releasing assets through the course of his receivership. In an action by the bank under the guarantees the defendants alleged, inter alia, that the receiver had not been validly appointed. Judgment was given for the bank. In *Re Neon Signs*,[3] the court held that in the absence of any evidence of dishonest or reckless exercise of the powers of a receiver, the court will not interfere with the exercise by debenture holders through their receivers acting on their behalf and their authority of such powers as were given to them by a company as incident to their security. What happened in this case was that the company gave notice of intention to move for an order for the removal of the receiver and also for an injunction restraining him from disclosing the documents and contracts concerning the company. On the same day, the company applied to the judge ex parte for an injunction against the receiver claiming like relief. After hearing argument the judge decided to refuse the application to continue such injunction. Based on the above authorities, it is clear that except on the ground of bad faith, the court will not interfere with the exercise of the powers of debenture holders under the debenture.

From the above conclusions, I allow the first defendant's application and order that the interim injunction dated 3 April 1987 be dissolved with costs.

Turning next to the application of the second defendant (encl 40) the bank relied on the supporting affidavit of its Assistant General Manager, Mr Woo Khai Yoon (encl 39). Part A of his affidavit gives a background of the loan transactions. Part C of his affidavit provides the grounds on which the second defendant relies to dissolve the interim injunction. In a nutshell, the second defendant says that the plaintiff has not shown that there is a serious question to be tried and that the plaintiff has no cause of action against the second defendant. Secondly, the plaintiff's undertaking as to damages is not adequate because it is now in the hands of the receivers. The said undertaking ought to have been given by the directors or officers of the plaintiff company in their personal capacity. In the event the second defendant is successful in setting aside the injunction, the second defendant may not be able to recover the damages suffered from the plaintiff. Thirdly, there was delay on the part of the plaintiff in applying for the interim injunction and the plaintiff is precluded by reason of laches and acquiescence to obtain the said injunction. Lastly, the second defendant alleges that the plaintiff has failed to disclose material information regarding two civil actions before the Kuala Lumpur and Penang High Courts which are closely related to the present suit. In the Kuala Lumpur proceeding, the second defendant had sued the defendants who are the directors of the plaintiff company in respect of their personal guarantees for the loan in question and they have raised a similar defence as in the present suit. Next, in the Penang proceeding, it is the first defendant who sued four defendants in their capacities as guarantors of the plaintiff. One important issue was raised here concerning the notice which the second defendant's solicitors gave to the plaintiff's present solicitors by telex dated 10 December 1986 (WKY13) that the third defendant in the said Penang proceeding was not to obtain an injunction without prior notice to the second defendant. Yet, despite the said notice, the present plaintiff proceeded to apply for an ex parte interim injunction. In the premises, the second defendant believes that such information should have been disclosed in the supporting affidavit of the plaintiff and the court would have found out that the second defendant had answered very similar allegations made by the directors of the plaintiff. On this ground, the second defendant believes that the plaintiff has abused the court's process.

After considering the affidavits and listening to the submissions of both counsel, I come to the same conclusion as I found in the similar issues raised in the first defendant's application and I adopt similar reasons for my finding. At this stage, I need not amplify my reasons in respect of the second defendant's application. Suffice it to say that I am of the opinion that the plaintiff also has no arguable case against the second defendant and they have shown that the appointment of the third, fourth, fifth and sixth defendants as receivers and managers under the debenture dated 24 November 1984 is valid and proper. In the result, the interim injunction granted by this court dated 3 April 1987 be and is hereby dissolved with costs.

Finally, I shall now deal with the joint application of the third, fourth, fifth and sixth defendants (encl 43) which is supported by the affidavit of Mr Gong Wee Ning, the third defendant (encl 34). I find the answer to their application is quite straight-forward. In view of my finding that they were validly appointed by the first and second defendants under the terms of the respective debentures, their application to dissolve this injunction, and more particularly, the second limb of the said order must be allowed with costs. I have read the affidavit of Mr Gong and I am satisfied that he had explained and rebutted the various allegations of the plaintiff. I have no reason to disbelieve him. I also find that there is no sufficient ground for the plaintiff to allege that the receivers were negligent or acted contrary to the terms of the debentures or had acted mala fide.

I think in order to appreciate the various allegations made against the receivers, it is instructive that we should know what their functions are. In this regard, I now quote the speech of Shaw LJ in *Newhart Developments* v *Cooperative Commercial Bank Ltd*[7] at p 641:

> One has got to see what the function of the receiver is. It is not, of course, to wind up the company. It is perhaps interesting to note in passing that when a liquidator is appointed, certainly in a winding up by the court, the powers of the directors immediately cease by statutory provision. There is no such provision in relation to the appointment of a receiver, whose duty is to protect the interests of the mortgagee or debenture holders, as the case may be ...
>
> There is in the debenture deed itself, a provision to the effect that the receiver may carry on the business of the company or concur in carrying on its business, which itself demonstrates that there is not a total extinction of the function of the directors. It is only within the scope of its assets which are covered by the debenture, and only in so far as it is necessary to apply those assets in the best possible way in the interests of the debenture holders that the receiver has a real function.

Therefore, for reasons stated above, I allow the defendants' applications to dissolve the injunction granted by order dated 3 April 1987 with costs.

Applications granted.

Solicitors: *Jayaraman Ong & Co; Skrine & Co; Rashid & Lee; Presgrave & Matthews.*

Reported by *Wong Kim Fatt*